IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.448 OF 1984

Bank of Maharashtra .. Plaintiffs

Vs.

Avikon Pharma and Ors. .. Defendants

Mr.Avinash Deshmukh for the plaintiffs

Mr.S.Deshmukh for all defendants except defendant no.1 to 3, 5 and 6

CORAM : S.U.KAMDAR, J

DATED : 4TH JULY, 2005

P.C.:

1. The present suit is filed by the plaintiff for the recovery of sum of Rs.6,60,330.11 alongwith interest @ 18% p.a. The aforesaid claim arises out of the L/C facility granted by the plaintiffs to the defendant no.1. Defendant no.1 is a borrower. Defendant no.2, 3 and 4 are the partners of defendant no.1. Defendant no.5 and 6 are sued in the capacity as guarantors.

2. It is the case of the plaintiffs that sometime in or about 1980 the borrower opened a

current account with the plaintiffs and thereunder requested for issuing the L/C for importing the goods from M/s.Upjohn Overseas Co. U.S.A. and for the said purpose L/C was opened for U.S.$ 1,84,800/-. The said L/C was subsequently amended and the amount covered thereunder was reduced to US$ 1,67,800. The plaintiffs accordingly opened the said L/C and the supplier has drawn various bills of exchanges and on acceptance the said payment covered under L/C has been paid over by the plaintiffs to the defendants. The aforesaid facility was granted on execution of various documents such as Demand Promissory Note, Letter of Continuing Security, An Agreement for pledge of the imported goods and Personal Guarantee by defendant no.2, 3 and 4. Defendant no.5 and 6 have also given guarantees. The defendants thereafter made part payment from time to time which has been duly debited to the said current account.

3. According to the plaintiff at the foot of the account, the amount was outstanding as due and payable which the defendant failed to pay. In the aforesaid circumstances, notice was issued on

20.12.83 to the defendants calling upon them to make payment of amount of Rs.6,28,877.28 outstanding as on 1.10.83 alongwith interest @ 18% p.a. The defendants did not make payment in respect of notice. Accordingly, the plaintiffs filed present suit. Issues are framed on 8.6.05 which reads as under:

ISSUES

1. Whether the defendants prove that the suit is barred by law of limitation?

2. Whether the plaintiffs prove that the plaintiff has granted the necessary L.C facility and has advanced various amounts under the said L.C.?

3. Whether the plaintiffs prove that under the said L.C. facility account there is a due and payable a sum of Rs.6,60,330.11 from the defendant?

4. Whether the plaintiffs prove that the plaintiffs are entitled to interest at the rate of 18% per annum?

5. Whether the defendant prove that the Bills of exchange relied upon by the plaintiffs in the suit are inadmissible in evidence and thus, the defendant is not liable to make any payment?

6. Whether the plaintiffs prove that there is a valid agreement to charge interest to the defendants?

7. Whether the plaintiffs prove that the

defendant nos.5 and 6 as guarantors are liable to make payment of the aforesaid amount?

8. Reliefs, if any?

4. Plaintiffs as well as defendants both have lead evidence of one witness each. Plaintiff has lead evidence of one Mr.Chandrashekhar Sadanand Joshi who has deposed in his evidence the aforesaid facts of opening L/C and making payment under the said L/C and that the said amount has been duly debited in the Current Account. He has also deposed that at the foot of the account, there is an amount of Rs.6,28,877.28 as due and payable. Plaintiffs has filed documents which are admitted documents and are marked as Exh.P-1 collectively. On perusal of the said documents, it is clear that the said L/C facility was granted and plaintiffs had made payment to the overseas supplier of the defendants. There are also promissory notes which are executed by the defendants on record. The said witness was cross-examined by the learned counsel for the defendants. However, in the cross-examination also, he has reiterated that the amount is due and payable under the said L/C by the

defendants to the plaintiffs. Exh.I to the plaint is a statement of account of the defendants in the plaintiff bank maintained in ordinary course of business. The said Ex.I has been proved in the evidence as Ex.P-2. The said Ex.P-2 indicates that at the foot of the account as on 29.12.83 there was due and payable of Rs.6,57,412.28.

5. The learned counsel for the defendants has also lead the oral evidence of one employee Mr.Ramesh Sangani, an employee in course of evidence has not only admitted the claim but has also admitted the interest amount due and payable. In view of admission of witness of defendant in his evidence, the present suit is required to be decreed. Suit is accordingly, decreed as prayed in prayer clause (a). Defendant to make payment of the cost of the suit. Suit disposed of.